

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

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Counsel for Landlord, Pinnacle Hills, LLC

In re:

BED BATH & BEYOND INC., *et al.*,

Debtors.¹

Case No.: 23-13359 (VFP)

Chapter 11

(Jointly Administered)

**APPLICATION OF PINNACLE HILLS, LLC FOR ALLOWANCE AND
PAYMENT OF AN ADMINISTRATIVE EXPENSE CLAIM**

Pinnacle Hills, LLC (the “Landlord”), by and through its undersigned counsel, Kelley Drye & Warren LLP, pursuant to sections 503(b) and 365(d)(3) of title 11 of the United States Code, files this application (this “Application”), requesting entry of an order, substantially

¹ The last four digits of Debtor Bed Bath & Beyond Inc.’s tax identification number are 0488. A complete list of Debtors in these chapter 11 cases and each such Debtor’s tax identification number may be obtained on the website of Debtors’ claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.’s principal place of business and Debtors’ service address in these chapter 11 cases is 650 Liberty Avenue, Union, New Jersey 07083.

in the form attached hereto as **Exhibit A** (the “Order”), for allowance and payment of the Landlord’s administrative expense claim (the “Administrative Expense Claim”), attached as **Exhibit 1** to the Order, in the amount of \$771,144.95, which is supported by documentation attached hereto as **Exhibit B**. In support of this Application, the Landlord represents, as follows:

BACKGROUND

1. Pinnacle Hills, LLC is the landlord to debtor Bed Bath & Beyond, Inc. with respect to retail premises located at 2203 Promenade Boulevard, Suite 20210, Rogers, AR 72758 at the Pinnacle Hills Power Center (the “Leased Premises”) pursuant to a certain lease (the “Lease”). The Leased Premises is located in a shopping center as that term is used in section 365(b)(3) of the Bankruptcy Code.²

2. On April 23, 2023 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) with this Court. Since the Petition Date, the Debtors have continued to manage their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. On September 14, 2023, the Court entered an order confirming the *Second Amended Joint Chapter 11 Plan of Bed Bath & Beyond Inc. and Its Debtor and its Affiliates* (the “Plan”).³ The Plan went effective on September 29, 2023 (the “Effective Date”).⁴

4. Pursuant to the Confirmation Order and Effective Date Notice, the deadline for creditors to file and serve requests for payment of administrative claims is fourteen (14) days after the Effective Date, which is October 13, 2023.

² See *In re Joshua Slocum, Ltd.*, 922 F.2d 1081 (3d Cir. 1990).

³ Docket Nos. 2172 (the “Confirmation Order”).

⁴ Docket No. 2311 (the “Effective Date Notice”).

5. The Landlord is entitled to payment of the Administrative Expense Claim pursuant to sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code for certain accrued and unpaid post-petition amounts, as set forth on **Exhibit B** (the “Unpaid Post-Petition Amounts”).

JURISDICTION AND STATUTORY PREDICATES FOR RELIEF

6. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue before this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B).

7. The statutory predicates for the relief requested are 11 U.S.C. §§ 365(d)(3), 503(b)(1)(A), 507(a)(2), and Rule 3001-1 of the Local Rules of the United States Bankruptcy Court of the District of New Jersey.

BASIS FOR RELIEF REQUESTED

8. Section 365(d)(3) of the Bankruptcy Code provides in relevant part as follows:

The trustee shall timely perform all the obligations of the debtor... arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title.⁵

11 U.S.C. § 365(d)(3).

9. The plain language of section 365(d)(3) requires Debtors to “fully and timely” perform their obligations under the Leases.⁶ Such obligations include rent, common area maintenance costs, and other charges arising under the applicable lease.⁷ The majority of courts that have considered the operation of section 365(d)(3), including this Court, have concluded that

⁵ 11 U.S.C. § 365(d)(3).

⁶ *In re Simbaki, Ltd.*, Case No. 13-36878, 2015 WL 1593888, at *2 (Bankr. S.D. Tex. April 3, 2015) (internal citations omitted); *see also In re Imperial Beverage Group, LLC*, 457 B.R. 490, 497–500 (Bankr. N.D. Tex. 2011).

⁷ *See Simbaki*, 2015 WL 1593888, at *2.

costs and expenses incurred for post-petition, pre-rejection performance under an unexpired nonresidential real property lease must be allowed as administrative expenses regardless of section 503(b)(1)(A) limitations.⁸

10. Further, Section 503(b)(1)(A) of the Bankruptcy Code affords administrative priority to claims for the actual, necessary costs and expenses of preserving an estate. “When third parties are induced to supply goods or services to the debtor-in-possession ... the purposes of [section 503] plainly require that their claims be afforded priority.”⁹ Section 507(a) of the Bankruptcy Code adds that administrative expense claims allowed under section 503(b) of the Bankruptcy Code will be given high priority.¹⁰

11. Based on the foregoing, the Unpaid Post-Petition Amounts constitute actual and necessary costs of the estates, which the Debtors have not yet paid.

12. Accordingly, the Landlord is entitled to allowance and immediate payment of its Administrative Expense Claim under the Lease pursuant to sections 365(d)(3), 503(a), 503(b)(1)(A), and 507(a)(2) of the Bankruptcy Code.

RESERVATION OF RIGHTS

13. The Landlord reserves all rights with respect to its administrative claim, including, but not limited to, the right to amend and supplement its claim to include additional post-petition amounts, including rents, taxes, interest, adjustments, costs, and attorneys’ fees as

⁸ See *Id.* at *2-*4; see also *In re CHS Elecs., Inc.*, 265 B.R. 339, 341-42 (Bankr. S.D. Fla. 2001) (agreeing with “a majority of courts” that post-petition rent is entitled to administrative priority without regard to § 503(b)(1)); *In re Liberty Outdoors, Inc.*, 205 B.R. 414, 417 (Bankr. E.D. Mo. 1997) (holding that the lessor is entitled to payment of unpaid expenses pursuant to section 365(d)(3) regardless of whether the expenses benefited or preserved the estate).

⁹ *In re Goody’s Family Clothing, Inc.*, 610 F.3d 812, 818 (3d Cir. 2010); *In re Whistler Energy II, L.L.C.*, 931 F.3d 432, 443 (5th Cir. 2019); *In re Jartran, Inc.*, 732 F.2d 584, 586 (7th Cir. 1984).

¹⁰ See *Simbaki*, 2015 WL 1593888, at *3.

provided for under the Lease. The Landlord also reserves its right to file additional administrative claims for accrued, but unbilled adjustments, including year-end adjustments, when such amounts are billed.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Landlord respectfully requests that the Court (i) enter an order, substantially in the form attached hereto as **Exhibit A**, allowing the Administrative Expense Claim attached as **Exhibit 1** to the Order; (ii) directing the Debtors to immediately pay the Administrative Expense Claim; and (iii) granting such other and further relief as the Court deems just and proper.

Dated: October 13, 2023

Respectfully submitted,

/s/ Robert L. LeHane

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Connie Y. Choe, Esq.

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Counsel for Landlord, Pinnacle Hills, LLC

EXHIBIT A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

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Counsel for Landlord, Pinnacle Hills LLC

In re:

BED BATH & BEYOND INC., *et al.*,

Debtors.¹

Case No.: 23-13359 (VFP)

Chapter 11

(Jointly Administered)

**ORDER GRANTING APPLICATION OF PINNACLE HILLS, LLC FOR
ALLOWANCE AND PAYMENT OF AN ADMINISTRATIVE EXPENSE CLAIM**

The relief set forth on the following page, numbered two (2), is hereby **ORDERED**.

¹ The last four digits of Debtor Bed Bath & Beyond Inc.'s tax identification number are 0488. A complete list of Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of Debtors' claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.'s principal place of business and Debtors' service address in these chapter 11 cases is 650 Liberty Avenue, Union, New Jersey 07083.

Upon the Application (the “Application”) of Pinnacle Hills, LLC (the “Landlord”), for entry of an order granting the allowance and payment of an administrative expense claim (the “Administrative Expense Claims”) attached hereto as Exhibit 1; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue is proper under 28 U.S.C. §§ 1408 and 1409; and this Court having determined that notice of the Application provided by the Landlord was adequate and sufficient under the circumstances and that no further notice of the Application need be provided; and this Court having reviewed the Application and the exhibits thereto; and this Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** as follows:

1. The Administrative Expense Claim is hereby granted, approved, and allowed in the total of \$771,144.95.
2. The Plan Administrator shall pay the Landlord the Administrative Expense Claim within seven (7) days of the entry of this Order.

EXHIBIT 1

Administrative Expense Claim

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

DOCUMENT

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REQUEST FOR PAYMENT OF
ADMINISTRATIVE EXPENSE

In re:

Chapter 11

Case Number:

NOTE: This form should not be used for an unsecured claim arising prior to the commencement of the case. In such instances, a proof of claim should be filed.

Name of Creditor:
(The person or other entity to whom the debtor owed money or property.)

Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check box if you have never received any notices from the bankruptcy court in this case.

Check box if the address differs from the address on the envelope sent to you by the court.

Name and Addresses Where Notices Should Be Sent:

THIS SPACE IS FOR COURT USE ONLY

ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:

Check here if this request:

replaces a previously filed request, dated: _____

amends a previously filed request, dated: _____

1. BASIS FOR CLAIM

Goods Sold
 Services performed
 Money loaned
 Personal injury/wrongful death
 Taxes
 Other (Describe briefly) _____

Retiree benefits as defined in 11 U.S.C. §1114(a)
 Wages, salaries and compensations (Fill out below)

Provide last four digits of your social security number _____

2. DATE DEBT WAS INCURRED:

3. TOTAL AMOUNT OF REQUEST AS OF ABOVE DATE: _____

Check this box if the request includes interest or other charges in addition to the principal amount of the request. Attach itemized statement of all interest or additional charges.

4. Secured Claim

Check this box if your claim is secured by collateral (including a right of setoff).

Brief Description of Collateral:

Real Estate Motor Vehicle
 Other (Describe briefly) _____

Value of Collateral: \$ _____

Check this box if there is no collateral or lien securing your claim.

5. Credits: The amount of all payments have been credited and deducted for the purposes of making this request for payment of administrative expenses.

THIS SPACE IS FOR COURT USE ONLY

6. Supporting Documents: Attach copies of supporting documents, such as purchase orders, invoices, itemized statements of running accounts, contracts as well as any evidence of perfection of a lien.

DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain.
If the documents are voluminous, attach a summary.

7. Date-Stamped Copy: To receive an acknowledgment of the filing of your request, enclose a self-addressed envelope and copy of this request.

Date:

Sign and print below the name and title, if any, of the creditor or other person authorized to file this request (attach copy of power of attorney, if any).



Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

NOTE: The filing of this request will not result in the scheduling of a hearing to consider payment of your administrative claim but will result in the registry of your administrative claim with the Bankruptcy Court. If you wish to have a hearing scheduled on your claim, you must file a motion in accordance with D.N.J. LBR 3001-1(b).

rev.8/1/15

EXHIBIT B

Supporting Documentation

Parent: 3300140 BED, BATH & BEYOND, INC.
Tenant: 2035165 BED BATH & BEYOND, INC.
DBA: 2430667 BED BATH + BEYOND
Company 3961 Pinnacle Hills Power Center
Business Unit 3961 Pinnacle Hills Power Center
Lease: 242967 Unit No : 20210 Type: RT - Retail Status: D - Dark BKT Bankruptcy

P C	Document	G/L	Invoice	Due Date/	Original	Open	Pre Petition	Post		
	Number	Company	Offset	Date	Check Date	Amount	BKPR	Petition	Remark	
D	RN	15990842	3961	WTSZ	4/15/2023	\$136.72	\$136.72	\$136.72	DRQ323592 2022 WATR SETTLEMENT	
D	RH	16070337	3961	RETZ	6/3/2023	\$28,384.75	\$28,384.75	\$28,384.75	Real Estate Tax Settlement	
D	RD	16166326	3961	BMRS	8/1/2023	\$20,000.00	\$20,000.00	\$20,000.00	MINIMUM RENT	
D	RD	16166326	3961	CATS	8/1/2023	\$6,236.78	\$6,236.78	\$6,236.78	CAM TOE	
D	RD	16166326	3961	WTSP	8/1/2023	\$170.00	\$170.00	\$170.00	WATER & SEWER	
D	RD	16220451	3961	BMRS	9/1/2023	\$20,000.00	\$20,000.00	\$20,000.00	MINIMUM RENT	
D	RD	16220451	3961	CATS	9/1/2023	\$6,236.78	\$6,236.78	\$6,236.78	CAM TOE	
D	RD	16220451	3961	WTSP	9/1/2023	\$170.00	\$170.00	\$170.00	WATER & SEWER	
D	RD	16271820	3961	BMRS	10/1/2023	\$20,000.00	\$20,000.00	\$20,000.00	MINIMUM RENT	
D	RD	16271820	3961	CATS	10/1/2023	\$6,236.78	\$6,236.78	\$6,236.78	CAM TOE	
D	RD	16271820	3961	WTSP	10/1/2023	\$170.00	\$170.00	\$170.00	WATER & SEWER	
Lease: 242967					\$107,741.81	\$107,741.81	\$28,521.47	\$79,220.34		
Total		BED BATH & BEYOND, INC.								
Business Unit:		3961	Pinnacle Hills Power Center							
Company		3961	Pinnacle Hills Power Center							
					Legal Fees:	\$691,924.61		\$691,924.61		
					Total Claim:	\$799,666.42		\$771,144.95		

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GGP0001

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Tenant Profile with Legal Clauses

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As Of - 10/11/2023

Reviewer _____

BED BATH & BEYOND
Pinnacle Hills Power Center

Parent ID:	3300140	BED, BATH & BEYOND, INC.	Property ID:	3961	Lease Type:	Retail	Rentable SF:	30,000	
Tenant ID:	2035165	BED BATH & BEYOND, INC.	Unit ID:	20210	Lease Status:	Dark	Usable SF:	30,000	
DBA ID:	2430667	BED BATH & BEYOND	Unit Type:	Strip Center	Deal Type:	Renewal / Ancillary Doc	Document:	Lease	
Lease ID:	242967	Lease Version:	3	Unit Usage:	Big Box	Closed Reason:	Bankruptcy	Rent Structure:	Taxes Paid Direct or Annually
Master Lease ID:	242967			Ownership:	Landlord Owned			Closed Store Bill Type:	

Billing Address:

BED BATH & BEYOND, INC.
ATTN: LEASE ADMINISTRATION
650 LIBERTY AVENUE
UNION NJ 07083

Legal Address:

BED BATH & BEYOND, INC.
650 LIBERTY AVENUE
ATTN: WARREN EISENBERG
UNION NJ 07083

LEASE DATES

Approved:	6/30/2022	Signed:	6/1/07	Rent Start Date:	9/18/07	Expire Date:	1/31/2028	Original End:	1/31/28	Commencement Date:	9/18/07
Version Effective:	2/1/2023	Commitment:	9/18/2007	Open Date:	9/18/07	Plan Out:	1/31/2028	Close Date:	7/30/23		

LOG DETAILS

L	Property Log Class	AM	Begin Date	Expired Date	Description	Explanation	Critical		
C	Description	ID				Remark	Units	UM	Date
DM	Deal Maker	DMID			Deal Maker/Salesforce Id	S0852508			
ND	Nexus Lease Logs	ND09			Water: Secondary Service				
ND	Nexus Lease Logs	ND13			Direct Billed Electric				

CURRENT MONTH RENT

Bill Code	Description	Starting Date	Ending Date	S C	Suspend Date	Gross Amount	Annual Gross	Annual Amount Per Square Foot	Rentable Square Footage	Bill Freq	Tax Code	Tax Rate/Area	Taxable Amount
BMRS	MINIMUM RENT	2/1/2023	1/31/2028			20,000.00	240,000.00	8.00	30,000	M			

CERTIFICATE OF SERVICE

I hereby certify that on this October 13, 2023, a copy of the foregoing Application was served via CM/ECF on all parties registered to receive such notice in the above-captioned cases.

/s/ Robert L. LeHane
Robert L. LeHane